**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 429 OF 2006.**

Sou.Tulsabai w/o.Parasu Bolke. ... Appellant.
Versus.
Smt.Tangubai Dhondiba Kamble & ors. ... Respondents.

Shri J.P.Akolkar for the Appellant.

**CORAM : ABHAY S.OKA, J.**
**DATED : 20th April, 2006.**

**P.C.:**

1. Heard the learned Advocate appearing for the Appellant. The Appellant is the original Plaintiff. The suit filed by the Appellant for injunction simplicitor has been dismissed by the trial Court by holding that the Appellant has failed to prove that she was in possession of the suit property. The decree of the trial Court has been confirmed in appeal by the District Court. The learned Advocate appearing for the Appellant submitted that Respondents Nos.1 to 3 (original Defendants Nos.1 to 3) have admitted the claim of the Appellant/Plaintiff. He pointed out that the Respondent No.4 (original Defendant No.4) claims to be the son of the deceased Dhondiba and he has failed to establish his relationship with Dhondiba. The learned Advocate submitted that in view of this position, Respondent No.4 was not entitled to interfere with the possession of the Appellant over the suit property.

2. I have considered the submissions. A perusal of the judgment of both the Courts below shows that there is concurrent finding of fact recorded that the

Appellant has failed to prove that she was in possession of the suit property. Reliance was placed on section 53A of the Transfer of Property Act 1882 for protecting possession. Going by the case of the Appellant/Plaintiff, it is apparent that the Plaintiff claims that she was put in possession of the suit property on the basis of an unregistered mortgage executed by the Respondents Nos.1 to 3. It is not the case of the Appellant/Plaintiff that she was put in possession of the suit property in part performance of an agreement for sale.

3. The finding of the Courts belows which is based on the appreciation of evidence on record is that the Appellant has failed to prove her possession. Therefore, the fact that the Respondent No.4 has failed to establish his relationship with Dhondiba has no relevance at all. Failure of the Defendant No.4/ Respondent No.4 to prove his case will not enable the Appellant to prove her possession. As stated earlier, the case made out under section 53A of the said Act of 1882 cannot be accepted.

4. No substantial questions of law arises. Second Appeal is dismissed.

**Judge.**